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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/476,455	12/30/1999	KAZUHIRO FUJII	SIC-99-047	7874

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DELAND LAW OFFICE
P.O. BOX 69
KLAMATH RIVER, CA 96050-0069

EXAMINER

BAXTER, GWENDOLYN WRENN

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 10/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/476,455

Applicant(s)

FUJII, KAZUHIRO

Examiner

Gwendolyn Baxter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10,12-14,16-19,22-24,26-48 and 50-53 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12,13,16,17,19,22-24 and 26-48 is/are allowed.
- 6) ☒ Claim(s) 10, 14, 18, 50-53 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

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This is the tenth Office Action for serial number 09/476,455, Bell Crank Assembly and Mounting Bracket for a Bicycle Hub, filed on December 30, 1999. Claims 10, 12-14, 16-19, 22-24, 26-48 and 50-53 are pending.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 10, 14, 18, and 50-53 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10, line 6, recites "the rear frame mounting bracket portion includes an axle opening dimensioned to receive a rear wheel axle of a bicycle therein". The size of the axle opening has been defined in terms of a rear wheel axle, which has not been positively recited in combination with the bell crank mounting bracket but functionally claimed. Since the rear wheel axle maybe in a variety of sizes depending upon the type and size of the bicycle employed; therefore, the claim is unclear and required correction. A similar problem occurs in claim 51.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10, 14, 18 and 51-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 3,184,993 to Swenson. Regarding claims 10, 14, 18 and 51-53, Swenson discloses a one-piece mounting bracket (Fig. 5) comprising: a mounting bracket portion (2) including an opening (68), a transition portion (3) extending downwardly from and inclined relative to the mounting bracket portion (2), a rear mounting portion (6) including an opening (6a) and extending from the inclined transition portion (3), and a mounting member (5) disposed on the transition portion (3); wherein the bracket portions are arranged and capable of being dimensioned such that the bracket is capable of attachment to a bicycle rear wheel axle such that the axle may extend through the rear mounting portion, the transition portion may extend forwardly along the side of the rear wheel and upwardly from the rear mounting portion, the mounting bracket portion may be disposed in front of the rear frame mounting portion with the mounting opening facing upwardly (when the bicycle is lying horizontally on the ground), and the mounting member may extend laterally outward from the bicycle. Swenson does not expressly teach the rear mounting portion opening (6a) being dimensioned to receive a rear wheel axle of a bicycle; however it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the dimensions of the opening because one would have been motivated to ensure proper sizing of the opening relative to an axle or rod to be received therein and

further since it has been held that a change in the size of a prior art device is a design consideration within the skill of the art.

Response to Arguments

In response to applicant's argument that there is nothing wrong with defining the dimension of a device in terms of the environment in which it is to be used.

Furthermore, applicant states that the "(holding that the limitation that the claimed wheelchair have a front leg portion ... so dimensioned as to be insertable through the space between the doorframe of an automobile and one of the seats thereof)" was not indefinite. See *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1575-76, 1 USPQ2d 1081, 1087-88 (Fed. Cir. 1986).

In the holding mentioned above, the functionality of the wheelchair is independent from the space defined between the door frame of automobile. In applicant's present invention the axle opening is critical to receiving the rear wheel axle of the bicycle, which directly affects the functionality of the present invention. This recitation is not merely cited to define the environment in which the present invention is to be used as alleged by applicant. Furthermore, applicant agrees the axle sizes do vary, if only slightly, if at all. Although the variation may be slight, this variation could be the difference in being able to insert the rear wheel axle of the bicycle in the axle opening or not.

The Federal Court held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device

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having the claimed the relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

Applicant's arguments filed June 13, 2005 have been fully considered but they are not persuasive.

Allowable Subject Matter

Claims 12, 13, 16, 17, 19, 22-24, 26-29, and 30-48 are allowed.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gwendolyn Baxter whose telephone number is 571-272-

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6814. The examiner can normally be reached on Monday-Wednesday, 8:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on 571-272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Gwendolyn Baxter
Primary Examiner
Art Unit 3632

October 14, 2005